

SECOND REGULAR SESSION

SENATE BILL NO. 1087

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATORS RIDGEWAY AND MAYER.

Read 1st time February 22, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

4457S.01I

AN ACT

To repeal sections 404.051, 404.550, 404.714, 456.1-103, 456.1-105, 456.1-110, 456.1-112, 456.2-204, 456.3-301, 456.3-304, 456.4-401, 456.4-402, 456.4A-411, 456.4B-411, 456.5-501, 456.5-504, 456.5-506, 456.7-703, 456.8-813, 456.8-814, 456.8-816, 473.333, 473.787, 475.092, 475.130, and 475.190, RSMo, and to enact in lieu thereof twenty-seven new sections relating to the Missouri uniform trust code.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 404.051, 404.550, 404.714, 456.1-103, 456.1-105, 456.1-110, 456.1-112, 456.2-204, 456.3-301, 456.3-304, 456.4-401, 456.4-402, 456.4A-411, 456.4B-411, 456.5-501, 456.5-504, 456.5-506, 456.7-703, 456.8-813, 456.8-814, 456.8-816, 473.333, 473.787, 475.092, 475.130, and 475.190, RSMo, are repealed and twenty-seven new sections enacted in lieu thereof, to be known as sections 404.051, 404.550, 404.714, 456.1-103, 456.1-105, 456.1-110, 456.1-112, 456.2-204, 456.3-301, 456.3-304, 456.4-401, 456.4-402, 456.4A-411, 456.4B-411, 456.5-501, 456.5-504, 456.5-506, 456.7-703, 456.8-813, 456.8-814, 456.8-816, 469.600, 473.333, 473.787, 475.092, 475.130, and 475.190, to read as follows:

404.051. 1. The custodian shall collect, hold, maintain, manage, invest and reinvest the custodial property. The custodian may accept a transfer of additional property for the same minor into the custodianship and may consolidate into a single custodianship custodial property received for the same minor from multiple transfers or transferors.

2. The custodian may deliver, pay over to the minor for expenditure by the minor, or expend for the minor's benefit, so much of the custodial property as the custodian determines advisable for the use and benefit of the minor, without

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

9 court order and without regard to the duty or ability of the custodian in the
10 custodian's individual capacity or of any other person to support the minor, or
11 any other income or property of the minor.

12 3. Upon the petition of a parent, guardian or conservator of a minor, an
13 adult member of the minor's family, any person interested in the welfare of the
14 minor, or of the minor if the minor has attained the age of fourteen years, the
15 court may order the custodian to expend or to pay over to the minor or the
16 minor's parent, guardian or conservator so much of the custodial property as the
17 court determines advisable for the use and benefit of the minor.

18 4. Any delivery, payment or expenditure pursuant to subsections 2 and
19 3 of this section is in addition to, not in substitution for, and does not affect, the
20 obligation of any person to support the minor.

21 5. (1) To the extent that the custodial property has not been expended,
22 the custodian shall deliver the custodial property in an appropriate manner, free
23 of the custodianship, as follows:

24 (a) To the minor on attaining the age of twenty-one years, or on attaining
25 the age of eighteen years for custodial property created by a transfer of property
26 from a person other than a donor and the minor requests the property; or

27 (b) On the minor's death, to the minor's estate.

28 (2) If the custodian does not deliver the custodial property to the minor
29 or the minor's estate as prescribed in subdivision (1) of this subsection, the minor
30 or the minor's personal representative may petition the court to declare the
31 custodianship terminated and to order delivery of the custodial property to the
32 minor or to the minor's estate free of the custodianship.

33 (3) To the extent the custodial property is real property, a conveyance and
34 delivery of the real property by the minor after attaining the age at which the
35 minor is entitled to the property free of the custodianship, or by the minor's heirs,
36 or by the minor's personal representative, shall terminate the custodian's powers,
37 duties and rights with respect to the real property.

38 (4) If the minor is an incapacitated person at the time the minor would
39 otherwise be entitled to receive the custodial property free of the custodianship,
40 the custodian shall deliver the custodial property to the incapacitated person's
41 conservator. If the incapacitated person has no conservator, the custodian may
42 transfer the custodial property to any adult person or financial institution,
43 including the custodian, as personal custodian for the incapacitated person under
44 any law providing for custodianship of property for incapacitated adult persons.

45 6. The custodian is under a duty to act in the interest of the minor and
46 to avoid conflicts of interest that impair the custodian's ability to so act. In
47 dealing with the custodial property, the custodian shall observe the degree of care
48 that would be observed by a prudent person dealing with the property and
49 conducting the affairs of another, except that all investments made on or after
50 August 28, 1998, shall be in accordance with the provisions of the Missouri
51 prudent investor act, sections [456.900 to 456.913] **469.900 to 469.913**,
52 RSMo. The custodian is not limited by any other statute restricting investments
53 or expenditures by fiduciaries. If the custodian has special skills or is named
54 custodian on the basis of representations of special skills or expertise, the
55 custodian is under a duty to use those skills. The custodian, in the custodian's
56 discretion and without liability to the minor or the minor's estate, may retain any
57 custodial property received under sections 404.005 to 404.094, and may hold
58 money or securities in the financial institution or brokerage company to which the
59 property was delivered by the transferor.

60 7. The custodian may invest in and pay premiums out of custodial
61 property for life or endowment insurance policies on the life of the minor or the
62 life of another person in whom the minor has an insurable interest, provided the
63 insurance proceeds will be distributed on the death of the insured life to the
64 minor, the minor's estate or the custodian in the custodian's representative
65 capacity.

66 8. Subject to the degree of care prescribed in subsection 6 of this section,
67 the custodian, acting in the capacity of custodian for the benefit of the minor, has
68 all rights, power and authority over the custodial property that unmarried,
69 nonincapacitated adult owners have over their own property, except the power to
70 make a gift of the minor's property unless the gift to be made is approved by a
71 court.

72 9. The custodian at all times shall keep custodial property separate and
73 distinct from all other property in a manner to identify it clearly as custodial
74 property of the minor. Custodial property consisting of an undivided interest in
75 property is sufficiently separate and distinct if the custodian's interest in the
76 property is held as a tenant in common with the other owners of the property and
77 the minor's proportional interest in the property is fixed. Custodial property is
78 sufficiently so identified if it is held in the name of the custodian in the manner
79 prescribed in section 404.707.

80 10. The custodian may establish checking, savings or other similar

81 accounts with financial institutions and brokers whereby both the custodian and
82 the minor may withdraw money from the account or draw checks against the
83 account. Money withdrawn from an account or checks written against an account
84 by the minor shall be treated as a delivery of custodial property from the
85 custodian to the minor.

86 11. Subject to the degree of care prescribed in subsection 6 of this section,
87 the custodian, acting in the capacity of custodian and for the benefit of the minor,
88 may borrow money, lend money, acquire by lease the use of property for the
89 minor, lease custodial property and enter into contracts under which the
90 performance required by such agreements may extend beyond the date the
91 custodianship terminates. The custodian shall hold property that is borrowed or
92 leased for the minor as custodial property in the name of the custodian in the
93 manner prescribed in section 404.047.

94 12. The custodian shall keep records of all transactions with respect to the
95 custodial property, including information necessary for preparation of the minor's
96 tax returns, and make them available for inspection at reasonable intervals by
97 a parent, the minor if the minor has attained the age of fourteen years, an adult
98 member of the minor's family if the minor has no living parent, and a legal
99 representative of the minor.

100 13. The minor's custodian may comply with an agreement with a
101 transferor of property to the minor, including an agreement respecting investment
102 objectives, expenses, compensation, resignation and naming of successor
103 custodians, to the extent that such agreement does not conflict with the
104 custodian's obligations to the minor under sections 404.005 to 404.094.

404.550. 1. The personal custodian shall collect, hold, maintain, manage,
2 invest and reinvest the custodial property. The personal custodian may accept
3 a transfer of additional property for the same beneficiary into the personal
4 custodianship and may consolidate into a single custodianship custodial property
5 received for the same beneficiary from multiple transfers or transferors.

6 2. The personal custodian shall deliver, pay over to the beneficiary for
7 expenditure by the beneficiary or expend for the beneficiary's benefit, so much of
8 the custodial property as the beneficiary may from time to time direct. If the
9 beneficiary is an incapacitated person, the personal custodian may deliver, pay
10 over to the beneficiary for expenditure by the beneficiary or expend for the
11 beneficiary's benefit, so much of the custodial property as the personal custodian
12 determines advisable for the use and benefit of the beneficiary and those

13 members of the beneficiary's family who are legally entitled to support by the
14 beneficiary or who were supported by the beneficiary at the time the beneficiary
15 became incapacitated, without court order and without regard to the duty or
16 ability of the personal custodian in the personal custodian's individual capacity
17 or of any other person to support the beneficiary, or any other income or property
18 of the beneficiary.

19 3. (1) Upon the petition of the beneficiary, guardian or conservator of an
20 incapacitated beneficiary, an adult member of a beneficiary's family or any person
21 interested in the welfare of the beneficiary, the court may order the personal
22 custodian to expend or to pay over to the beneficiary or the beneficiary's guardian
23 or conservator so much of the custodial property as the court determines
24 advisable for the use and benefit of the beneficiary.

25 (2) Upon petition of a personal custodian, the beneficiary, an adult
26 member of the beneficiary's family or any person interested in the welfare of the
27 beneficiary, the probate division of the circuit court shall determine and declare
28 whether the beneficiary is a disabled or incapacitated person.

29 4. Any delivery, payment or expenditure under subsections 2 and 3 of this
30 section is in addition to, not in substitution for, and does not affect the obligation
31 of any person to support the incapacitated beneficiary or the incapacitated
32 beneficiary's dependents.

33 5. The personal custodian is under a duty to act in the interest of the
34 beneficiary and to avoid conflicts of interest that impair the personal custodian's
35 ability to so act. In dealing with the custodial property, the personal custodian
36 shall follow the investment and other directions of a beneficiary who is not
37 incapacitated and shall observe the degree of care that would be observed by a
38 prudent person dealing with the property and conducting the affairs of another,
39 except that all investments made on or after August 28, 1998, shall be in
40 accordance with the provisions of the Missouri prudent investor act, sections
41 **[456.900 to 456.913] 469.900 to 469.913**, RSMo. The personal custodian is not
42 limited by any other statute restricting investments or expenditures by
43 fiduciaries. If the personal custodian has special skills or is named personal
44 custodian on the basis of representation of special skills or expertise, the
45 custodian is under a duty to use those skills. The personal custodian, in the
46 custodian's discretion and without liability to the beneficiary or the beneficiary's
47 estate, may retain any custodial property received under sections 404.400 to
48 404.650, and may hold money or securities in the financial institution or

49 brokerage company to which the property was delivered by the transferor.

50 6. The personal custodian may invest in and pay premiums out of
51 custodial property for life or endowment insurance policies on the life of the
52 beneficiary or the life of another person in whom the beneficiary has an insurable
53 interest, provided the insurance proceeds will be distributed on the death of the
54 insured life to the beneficiary, the persons designated by an adult
55 nonincapacitated beneficiary, the beneficiary's estate or the personal custodian
56 in the personal custodian's representative capacity.

57 7. Subject to the degree of care prescribed in subsection 5 of this section,
58 the personal custodian, acting in the capacity of personal custodian for the benefit
59 of the beneficiary, has all rights, power and authority over the custodial property
60 that unmarried, nonincapacitated adult owners have over their own property,
61 except the power to make a gift of the beneficiary's property (i) unless granted
62 such power by a nonincapacitated beneficiary in a writing signed and dated, and
63 acknowledged or proved and certified in the manner provided by law for
64 conveyances of real estate, or (ii) unless the gift to be made is approved by a court
65 under section 475.094, RSMo.

66 8. The personal custodian at all times shall keep custodial property
67 separate and distinct from all other property in a manner to identify it clearly as
68 custodial property of the beneficiary. Custodial property consisting of an
69 undivided interest in property is sufficiently separate and distinct if the personal
70 custodian's interest in the property is held as a tenant in common with the other
71 owners of the property and the beneficiary's proportional interest in the property
72 is fixed. Custodial property is sufficiently so identified if it is held in the name
73 of the personal custodian in the manner prescribed in section 404.540.

74 9. The personal custodian may establish checking, savings or other similar
75 accounts with financial institutions and brokers whereby both the personal
76 custodian and the beneficiary may withdraw money from the account or draw or
77 issue checks or drafts against the account. Money withdrawn from an account or
78 checks written against an account by the beneficiary shall be treated as a delivery
79 of custodial property from the personal custodian to the beneficiary.

80 10. Subject to the degree of care prescribed in subsection 5 of this section,
81 the personal custodian, acting in the capacity of personal custodian and for the
82 benefit of the beneficiary, may borrow money, lend money, acquire by lease the
83 use of property for the beneficiary, lease custodial property and enter into
84 contracts under which the performance required by such agreements may extend

beyond the date the personal custodianship terminates. The personal custodian shall hold property that is borrowed or leased for the beneficiary as custodial property in the name of the personal custodian in the manner prescribed in section 404.540.

11. The personal custodian shall keep records of all transactions with respect to the custodial property, including information necessary for preparation of the beneficiary's tax returns, and make them available for inspection at reasonable intervals by the beneficiary, an adult member of the beneficiary's family if the beneficiary is incapacitated, and a legal representative of the beneficiary.

12. The power, authority, duties and responsibilities of a personal custodian, as provided in sections 404.400 to 404.650, may be modified by the provisions of a written agreement between the transferor or beneficiary and personal custodian.

404.714. 1. An attorney in fact who elects to act under a power of attorney is under a duty to act in the interest of the principal and to avoid conflicts of interest that impair the ability of the attorney in fact so to act. A person who is appointed an attorney in fact under a power of attorney, either durable or not durable, who undertakes to exercise the authority conferred in the power of attorney, has a fiduciary obligation to exercise the powers conferred in the best interests of the principal, and to avoid self-dealing and conflicts of interest, as in the case of a trustee with respect to the trustee's beneficiary or beneficiaries; and in the absence of explicit authorization, the attorney in fact shall exercise a high degree of care in maintaining, without modification, any estate plan which the principal may have in place, including, but not limited to, arrangements made by the principal for disposition of assets at death through beneficiary designations, ownership by joint tenancy or tenancy by the entirety, trust arrangements or by will or codicil. Unless otherwise provided in the power of attorney or in a separate agreement between the principal and attorney in fact, an attorney in fact who elects to act shall exercise the authority granted in a power of attorney with that degree of care that would be observed by a prudent person dealing with the property and conducting the affairs of another, except that all investments made on or after August 28, 1998, shall be in accordance with the provisions of the Missouri prudent investor act, sections [456.900 to 456.913] **469.900 to 469.913**, RSMo. If the attorney in fact has special skills or was appointed attorney in fact on the basis of representations of special skills or

23 expertise, the attorney in fact has a duty to use those skills in the principal's
24 behalf.

25 2. On matters undertaken or to be undertaken in the principal's behalf
26 and to the extent reasonably possible under the circumstances, an attorney in fact
27 has a duty to keep in regular contact with the principal, to communicate with the
28 principal and to obtain and follow the instructions of the principal.

29 3. If the principal is not available to communicate in person with the
30 attorney in fact because:

31 (1) The principal is missing under such circumstances that it is not known
32 whether the principal is alive or dead; or

33 (2) The principal is captured, interned, besieged or held hostage or
34 prisoner in a foreign country;

35 the authority of the attorney in fact under a power of attorney, whether durable
36 or not, shall not terminate and the attorney in fact may continue to exercise the
37 authority conferred, faithfully and in the best interests of the principal, until the
38 principal returns or is publicly declared dead by a governmental agency, domestic
39 or foreign, or is presumed dead because of continuous absence of five years as
40 provided in section 472.290, RSMo 1986, or a similar law of the place of the last
41 known domicile of the person whose absence is in question.

42 4. If, following execution of a power of attorney, the principal is absent or
43 becomes wholly or partially disabled or incapacitated, or if there is a question
44 with regard to the ability or capacity of the principal to give instructions to and
45 supervise the acts and transactions of the attorney in fact, an attorney in fact
46 exercising authority under a power of attorney, either durable or not durable,
47 may consult with any person or persons previously designated by the principal
48 for such purpose, and may also consult with and obtain information from the
49 principal's spouse, physician, attorney, accountant, any member of the principal's
50 family or other person, corporation or government agency with respect to matters
51 to be undertaken in the principal's behalf and affecting the principal's personal
52 affairs, welfare, family, property and business interests.

53 5. If, following execution of a durable power of attorney, a court appoints
54 a legal representative for the principal, the attorney in fact shall follow the
55 instructions of the court or of the legal representative, and shall communicate
56 with and be accountable to the principal's guardian on matters affecting the
57 principal's personal welfare and to the principal's conservator on matters
58 affecting the principal's property and business interests, to the extent that the

59 responsibilities of the guardian or conservator and the authority of the attorney
60 in fact involve the same subject matter.

61 6. The authority of an attorney in fact, under a power of attorney that is
62 not durable, is suspended during any period that the principal is disabled or
63 incapacitated to the extent that the principal is unable to receive or evaluate
64 information or to communicate decisions with respect to the subject of the power
65 of attorney; and an attorney in fact exercising authority under a power of
66 attorney that is not durable shall not act in the principal's behalf during any
67 period that the attorney in fact knows the principal is so disabled or
68 incapacitated.

69 7. An attorney in fact shall exercise authority granted by the principal in
70 accordance with the instrument setting forth the power of attorney, any
71 modification made therein by the principal or the principal's legal representative
72 or a court, and the oral and written instructions of the principal, or the written
73 instructions of the principal's legal representative or a court.

74 8. An attorney in fact may be instructed in a power of attorney that the
75 authority granted shall not be exercised until, or shall terminate on, the
76 happening of a future event, condition or contingency, as determined in a manner
77 prescribed in the instrument.

78 9. On the death of the principal, the attorney in fact shall follow the
79 instructions of the court, if any, having jurisdiction over the estate of the
80 principal, or any part thereof, and shall communicate with and be accountable to
81 the principal's personal representative, or if none, the principal's successors; and
82 the attorney in fact shall promptly deliver to and put in the possession and
83 control of the principal's personal representative or successors, any property of
84 the principal and copies of any records of the attorney in fact relating to
85 transactions undertaken in the principal's behalf that are deemed by the personal
86 representative or the court to be necessary or helpful in the administration of the
87 decedent's estate.

88 10. If an attorney in fact has a property or contract interest in the subject
89 of the power of attorney or the authority of the attorney in fact is otherwise
90 coupled with an interest in a person other than the principal, this section does
91 not impose any duties on the attorney in fact that would conflict or be
92 inconsistent with that interest.

456.1-103. In sections 456.1-101 to 456.11-1106:

2 (1) "Action," with respect to an act of a trustee, includes a failure to act.

3 (2) **"Ascertainable standard" means a standard relating to an**
4 **individual's health, education, support, or maintenance within the**
5 **meaning of Section 2041(b)(1)(A) or Section 2541(c)(1) of the Internal**
6 **Revenue Code.**

7 (3) "Beneficiary" means a person that:

8 (a) has a present or future beneficial interest in a trust, vested or
9 contingent; or

10 (b) in a capacity other than that of trustee, holds a power of appointment
11 over trust property.

12 [(3)] (4) "Charitable trust" means a trust, or portion of a trust, created
13 for a charitable purpose described in subsection 1 of section 456.4-405.

14 [(4)] (5) "Conservator" means a person described in subdivision (3) of
15 section 475.010, RSMo. This term does not include a conservator ad litem.

16 [(5)] (6) "Conservator ad litem" means a person appointed by the court
17 pursuant to the provisions of section 475.097, RSMo.

18 [(6)] (7) "Environmental law" means a federal, state, or local law, rule,
19 regulation, or ordinance relating to protection of the environment.

20 [(7)] (8) "Financial institution" means a non-foreign bank, savings and
21 loan or trust company chartered, regulated and supervised by the Missouri
22 division of finance, the office of the comptroller of the currency, the office of thrift
23 supervision, the National Credit Union Administration, or the Missouri division
24 of credit union supervision. The term "non-foreign bank" shall mean a bank that
25 is not a foreign bank within the meaning of subdivision (1) of section 361.005,
26 RSMo.

27 [(8)] (9) "Guardian" means a person described in subdivision (6) of
28 section 475.010, RSMo. The term does not include a guardian ad litem.

29 [(9)] (10) "Interested persons" include beneficiaries and any others
30 having a property right in or claim against a trust estate which may be affected
31 by a judicial proceeding. It also includes fiduciaries and other persons
32 representing interested persons. The meaning as it relates to particular persons
33 may vary from time to time and must be determined according to the particular
34 purposes of, and matter involved in, any proceeding.

35 [(10)] (11) "Interests of the beneficiaries" means the beneficial interests
36 provided in the terms of the trust.

37 [(11)] (12) "Internal Revenue Code" means the United States Internal
38 Revenue Code of 1986, as in effect on January 1, 2005, or as later amended.

39 [(12)] (13) "Jurisdiction," with respect to a geographic area, includes a
40 state or country.

41 [(13)] (14) "Person" means an individual, corporation, business trust,
42 estate, trust, partnership, limited liability company, association, joint venture,
43 government; governmental subdivision, agency, or instrumentality; public
44 corporation, or any other legal or commercial entity.

45 [(14)] (15) "Permissible distributee" means a beneficiary who is currently
46 eligible to receive distributions of trust income or principal, whether mandatory
47 or discretionary.

48 [(15)] (16) "Power of withdrawal" means a presently exercisable [general]
49 power of [appointment other than a power exercisable only upon consent of the
50 trustee or a person holding an adverse interest] **a beneficiary to withdraw**
51 **assets from the trust without the consent of the trustee or any other**
52 **person.**

53 [(16)] (17) "Principal place of administration" of a trust is the trustee's
54 usual place of business where the records pertaining to the trust are kept, or the
55 trustee's residence if the trustee has no such place of business, unless otherwise
56 designated by the terms of the trust as provided in section 456.1-108. In the case
57 of cotrustees, the principal place of administration is, in the following order of
58 priority:

59 (a) The usual place of business of the corporate trustee if there is but one
60 corporate cotrustee;

61 (b) The usual place of business or residence of the trustee who is a
62 professional fiduciary if there is but one such trustee and no corporate cotrustee;
63 or

64 (c) The usual place of business or residence of any of the cotrustees.

65 [(17)] (18) "Professional fiduciary" means an individual who represents
66 himself or herself to the public as having specialized training, experience or skills
67 in the administration of trusts.

68 [(18)] (19) "Property" means anything that may be the subject of
69 ownership, whether real or personal, legal or equitable, or any interest therein.

70 [(19)] (20) "Qualified beneficiary" means a beneficiary who, on the date
71 the beneficiary's qualification is determined:

72 (a) is a permissible distributee;

73 (b) would be a permissible distributee if the interests of the permissible
74 distributees described in paragraph (a) of this subdivision terminated on that

75 date; or

76 (c) would be a permissible distributee if the trust terminated on that date.

77 [(20)] (21) "Record" means information that is inscribed on a tangible
78 medium or that is stored in an electronic or other medium and is retrievable in
79 perceivable form.

80 [(21)] (22) "Revocable," as applied to a trust, means [revocable by the
81 settlor] **that the settlor has the legal power to revoke the trust** without
82 the consent of the trustee or a person holding an adverse interest, **regardless**
83 **of whether the settlor has the mental capacity to do so in fact.**

84 [(22)] (23) "Settlor" means a person, including a testator, who creates,
85 or contributes property to, a trust. If more than one person creates or contributes
86 property to a trust, each person is a settlor of the portion of the trust property
87 attributable to that person's contribution except to the extent another person has
88 the power to revoke or withdraw that portion pursuant to the terms of the trust.

89 [(23)] (24) "Sign" means, with present intent to authenticate or adopt a
90 record:

91 (a) to execute or adopt a tangible symbol; or

92 (b) to attach to or logically associate with the record an electronic sound,
93 symbol, or process.

94 [(24)] (25) "Spendthrift provision" means a term of a trust which
95 restrains either the voluntary or involuntary transfer or both the voluntary and
96 involuntary transfer of a beneficiary's interest.

97 [(25)] (26) "State" means a state of the United States, the District of
98 Columbia, Puerto Rico, the United States Virgin Islands, or any territory or
99 insular possession subject to the jurisdiction of the United States. The term
100 includes an Indian tribe or band recognized by federal law or formally
101 acknowledged by a state.

102 [(26)] (27) "Terms of a trust" means the manifestation of the settlor's
103 intent regarding a trust's provisions as expressed in the trust instrument or as
104 may be established by other evidence that would be admissible in a judicial
105 proceeding.

106 [(27)] (28) "Trust instrument" means an instrument executed by the
107 settlor that contains terms of the trust, including any amendments thereto.

108 [(28)] (29) "Trustee" includes an original, additional, and successor
109 trustee, and a cotrustee.

456.1-105. 1. Except as otherwise provided in the terms of the trust,

2 sections 456.1-101 to 456.11-1106 govern the duties and powers of a trustee,
3 relations among trustees, and the rights and interests of a beneficiary.

4 2. The terms of a trust prevail over any provision of sections 456.1-101 to
5 456.11-1106 except:

6 (1) the requirements for creating a trust;

7 (2) the duty of a trustee to act in good faith and in accordance with the
8 purposes of the trust;

9 (3) the requirement that a trust and its terms be for the benefit of its
10 beneficiaries;

11 (4) the power of the court to modify or terminate a trust under section
12 456.4-410, subsection 3 of section 456.4B-411, and sections 456.4-412 to
13 456.4-416;

14 (5) the effect of a spendthrift provision and the rights of certain creditors
15 and assignees to reach a trust as provided in sections 456.5-501 to 456.5-507;

16 (6) the power of the court under section 456.7-702 to require, dispense
17 with, or modify or terminate a bond;

18 (7) the power of the court under subsection 2 of section 456.7-708 to adjust
19 a trustee's compensation specified in the terms of the trust which is unreasonably
20 low or high;

21 (8) **subject to subsection 3 of this section**, the duty **of a trustee of**
22 **an irrevocable trust** to notify [the] **each** permissible [distributees of an
23 irrevocable trust who have] **distributee who has** attained **the age of**
24 twenty-one years [of age] of the existence of the trust and of [their] **that**
25 **permissible distributee's** rights to request trustee's reports and other
26 information reasonably related to the administration of the trust;

27 (9) the duty to respond to the request of a qualified beneficiary of an
28 irrevocable trust for trustee's reports and other information reasonably related
29 to the administration of [a] **the** trust;

30 (10) the effect of an exculpatory term under section 456.10-1008;

31 (11) the rights under sections 456.10-1010 to 456.10-1013 of a person
32 other than a trustee or beneficiary;

33 (12) periods of limitation for commencing a judicial proceeding;

34 (13) the power of the court to take such action and exercise such
35 jurisdiction as may be necessary in the interests of justice; and

36 (14) the venue for a judicial proceeding as provided in section 456.2-204.

37 **3. For purposes of subdivision (8) of subsection 2 of this section,**

38 the settlor may designate by the terms of the trust one or more
39 permissible distributees to receive notification of the existence of the
40 trust and of the right to request trustee's reports and other information
41 reasonably related to the administration of the trust in lieu of
42 providing the notice, information or reports to any other permissible
43 distributee who is an ancestor or lineal descendant of the designated
44 permissible distributee.

456.1-110. 1. A specified charitable organization or a person appointed
2 to enforce a trust created for the care of an animal or another noncharitable
3 purpose as provided in sections 456.4-408 or 456.4-409 has the rights of a
4 qualified beneficiary under sections 456.1-101 to 456.11-1106.

5 2. Except with respect to [section] **sections 456.1-108 and** 456.4B-411,
6 the attorney general of this state has the rights of a qualified beneficiary with
7 respect to an interest in a charitable trust having its principal place of
8 administration in this state if:

9 (1) a specified charitable organization is not entitled to a distribution from
10 such interest; and

11 (2) distributions from the interest are payable in a manner that, if
12 payable to an identifiable charitable entity, would qualify that entity as a
13 specified charitable organization.

14 3. In this section a "specified charitable organization" means an
15 identifiable charitable entity, **the interest of which is not otherwise subject**
16 **to any power of appointment or other power of termination**, that, on the
17 date that entity's qualification is determined:

18 (a) is a permissible distributee;

19 (b) would be a permissible distributee if the interests of the permissible
20 distributees terminated on that date; or

21 (c) would be a permissible distributee if the trust terminated on that date.

22 4. No provision of this section shall limit the authority of the attorney
23 general of this state to supervise and control charitable organizations.

456.1-112. 1. If a settlor's marriage is dissolved or annulled, any
2 beneficial terms of a trust in favor of the settlor's former spouse or any fiduciary
3 appointment of the settlor's former spouse is revoked on the date the marriage
4 is dissolved or annulled, whether or not the terms of the trust refer to marital
5 status. The terms of the trust shall be given effect as if the former spouse had
6 died immediately before the date the dissolution or annulment became final. This

7 subsection shall also apply to any beneficial interest or fiduciary appointment in
8 favor of a relative of the settlor's former spouse as if such relative were the
9 former spouse.

10 2. Subsection 1 of this section does not apply to the terms of a trust that
11 provide any beneficial interest or fiduciary appointment for a former spouse or a
12 relative of a former spouse that was created after the marriage was dissolved or
13 annulled, or that expressly states that marriage dissolution or annulment shall
14 not affect the designation of a former spouse or relative of a former spouse as a
15 beneficiary or a fiduciary of the trust.

16 3. A court may order or the settlor and the spouse may agree before,
17 during, or after the marriage in a binding contract or settlement agreement that
18 subsection 1 of this section does not apply to a beneficial interest or fiduciary
19 appointment.

20 4. Any terms of a trust revoked solely by this section are revived by the
21 settlor's remarriage to the former spouse or by a nullification of the marriage
22 dissolution or annulment.

23 5. In this section, "a relative of the settlor's former spouse" means an
24 individual who is related to the settlor's former spouse by blood, adoption or
25 affinity and who, after the divorce or annulment, is not related to the settlor by
26 blood, adoption or affinity.

27 **6. The provisions of this section shall not apply to any trust for**
28 **which a gift tax marital deduction has been claimed or allowed under**
29 **Section 2523 of the Internal Revenue Code. The provisions of this**
30 **section shall not apply in a manner that would result in either:**

31 **(a) a transfer to a trust being treated as an incomplete gift for**
32 **federal gift tax purposes; or**

33 **(b) inclusion of assets of a trust in the gross estate of a settlor**
34 **for federal estate tax purposes.**

456.2-204. 1. Venue for judicial proceedings involving [the internal affairs
2 of a] trust **administration** shall be:

3 (1) For a trust then registered in this state, in the probate division of the
4 circuit court where the trust is registered; or

5 (2) For a trust not then registered in this state, in the probate division of
6 the circuit court where the trust could properly be registered; or

7 (3) For a trust not then registered in this state and which cannot properly
8 be registered in this state, in accordance with the rules of civil procedure.

9 2. Where a judicial proceeding under this chapter could be maintained in
10 more than one place in this state, the court in which the proceeding is first
11 commenced has the exclusive right to proceed.

12 3. If proceedings concerning the same trust are commenced in more than
13 one court of this state, the court in which the proceeding was first commenced
14 shall continue to hear the matter, and the other courts shall hold the matter in
15 abeyance until the question of venue is decided, and if the court in which the
16 proceeding was first commenced determines that venue is properly in another
17 court, it shall transfer the proceeding to the other court.

18 4. If a court finds that in the interest of justice a proceeding or a file
19 should be located in another court of this state, the court making the finding may
20 transfer the proceeding or file to the other court.

 456.3-301. 1. Notice to a person who may represent and bind another
2 person under sections 456.3-301 to 456.3-305 has the same effect as if notice were
3 given directly to the other person.

4 2. The consent of a person who may represent and bind another person
5 under sections 456.3-301 to 456.3-305 is binding on the person represented unless
6 the person represented objects to the representation before the consent would
7 otherwise have become effective.

8 3. Except as otherwise provided in sections 456.4A-411 and 456.6-602, a
9 person who under sections 456.3-301 to 456.3-305 may represent a settlor who
10 lacks capacity may receive notice and give a binding consent on the settlor's
11 behalf.

12 **4. A settlor may not represent and bind a beneficiary under**
13 **sections 456.3-301 to 456.3-305 with respect to the termination or**
14 **modification of a trust under section 456.4-411A.**

 456.3-304. 1. Unless otherwise represented, a minor, incapacitated, or
2 unborn individual, or a person whose identity or location is unknown and not
3 reasonably ascertainable, may be represented by and bound by another having
4 a substantially identical interest with respect to the particular question or
5 dispute, but only to the extent there is no conflict of interest between the
6 representative and the person represented **with respect to a particular**
7 **question or dispute.**

8 **2. Unless otherwise represented, a beneficiary who is not a**
9 **qualified beneficiary may be represented by and bound by a qualified**
10 **beneficiary having a substantially identical interest with respect to the**

11 particular question or dispute, but only to the extent there is no
12 conflict of interest with respect to the particular question or dispute
13 between the representative and the person represented, in any court
14 proceeding under subsection 2 of section 456.4-412, or in a nonjudicial
15 settlement agreement entered into under section 456.1-111 in lieu of
16 such a court proceeding.

456.4-401. A trust may be created by:

- 2 (1) transfer of property to another person as trustee during the settlor's
3 lifetime or by will or other disposition taking effect upon the settlor's death;
- 4 (2) declaration by the owner of property that the owner holds identifiable
5 property as trustee;
- 6 (3) exercise of a power of appointment in favor of a trustee; or
- 7 (4) a court under section 475.092, 475.093, or 511.030, RSMo, or 42
8 U.S.C. Section 1396p(d)(4).

456.4-402. 1. Other than for a trust created by section 475.092, 475.093,
2 or 511.030, RSMo, or 42 U.S.C. Section 1396p(d)(4), a trust is created only if:

- 3 (1) the settlor has capacity to create a trust;
- 4 (2) the settlor indicates an intention to create the trust;
- 5 (3) the trust has a definite beneficiary or is:
 - 6 (a) a charitable trust;
 - 7 (b) a trust for the care of an animal, as provided in section 456.4-408; or
 - 8 (c) a trust for a noncharitable purpose, as provided in section 456.4-409;
- 9 (4) the trustee has duties to perform; and
- 10 (5) the same person is not the sole trustee and sole beneficiary.

11 2. A beneficiary is definite if the beneficiary can be ascertained now or in
12 the future, subject to any applicable rule against perpetuities.

13 3. A power in a trustee to select a beneficiary from an indefinite class is
14 valid. If the power is not exercised within a reasonable time, the power fails and
15 the property subject to the power passes to the persons who would have taken the
16 property had the power not been conferred.

456.4A-411. 1. Except for a trust established by a court under
2 section 475.092, 475.093, 511.033, RSMo, or 42 U.S.C. Section 1396p(d)(4),
3 a noncharitable irrevocable trust may be modified or terminated upon consent of
4 the settlor and all beneficiaries, without court approval, even if the modification
5 or termination is inconsistent with a material purpose of the trust. A settlor's
6 power to consent to a trust's termination or modification may be exercised by an

7 agent under a power of attorney only to the extent expressly authorized by the
8 power of attorney or the terms of the trust; by the settlor's conservator with the
9 approval of the court supervising the conservatorship if an agent is not so
10 authorized; or by the settlor's conservator ad litem with the approval of the court
11 if an agent is not so authorized and a conservator has not been appointed.

12 2. Upon termination of a trust under subsection 1 of this section, the
13 trustee shall distribute the trust property as agreed by the beneficiaries.

14 3. If not all of the beneficiaries consent to a proposed modification or
15 termination of the trust under subsection 1 of this section, the modification or
16 termination may be approved by the court if the court is satisfied that:

17 (1) if all of the beneficiaries had consented, the trust could have been
18 modified or terminated under subsection 1 of this section; and

19 (2) the interests of a beneficiary who does not consent will be adequately
20 protected.

456.4B-411. 1. When all of the adult beneficiaries having the capacity to
2 contract consent, the court may, upon finding that the interest of any
3 nonconsenting beneficiary will be adequately protected, modify the terms of a
4 noncharitable irrevocable trust so as to reduce or eliminate the interests of some
5 beneficiaries and increase those of others, change the times or amounts of
6 payments and distributions to beneficiaries, or provide for termination of the
7 trust at a time earlier or later than that specified by its terms. The court may
8 at any time upon its own motion appoint a representative pursuant to section
9 456.3-305 to represent a nonconsenting beneficiary. The court shall appoint such
10 a representative upon the motion of any party, unless the court determines such
11 an appointment is not appropriate under the circumstances.

12 2. Upon termination of a trust under subsection 1 of this section, the
13 trustee shall distribute the trust property as directed by the court.

14 3. If a trust cannot be terminated or modified under subsection 1 of this
15 section because not all adult beneficiaries having capacity to contract consent or
16 the terms of the trust prevent such modification or termination, the modification
17 or termination may be approved by the court if the court is satisfied that the
18 interests of a beneficiary, other than the settlor, who does not consent will be
19 adequately protected, modification or termination will benefit a living settlor who
20 is also a beneficiary, and:

21 (1) in the case of a termination, the party seeking termination establishes
22 that continuance of the trust is not necessary to achieve any material purpose of

23 the trust; or

24 (2) in the case of a modification, the party seeking modification
25 establishes that the modification is not inconsistent with a material purpose of
26 the trust, and the modification is not specifically prohibited by the terms of the
27 trust.

28 4. This section shall apply to trusts created **under trust instruments**
29 **that become irrevocable** on or after January 1, 2005. The provisions of section
30 456.590 shall apply to all trusts **that were created under trust instruments**
31 **that become irrevocable** prior to January 1, 2005.

456.5-501. **Except as otherwise provided in sections 456.5-506 to**
2 **456.5-507**, to the extent a beneficiary's interest is not [protected by] **subject to**
3 a spendthrift provision, an assignee or a judgment creditor of the beneficiary may,
4 without court order, reach the beneficiary's interest by attachment of present or
5 future distributions to or for the benefit of the beneficiary or other means. The
6 court may limit the award to such relief as is appropriate under the
7 circumstances.

456.5-504. 1. [Except as otherwise provided in section 456.5-503, whether
2 or not a trust contains a spendthrift provision, a creditor of a beneficiary may not
3 compel a distribution that is subject to the trustee's discretion, even if:

4 (1) the discretion is expressed in the form of a standard of distribution;
5 or

6 (2) the trustee has abused the discretion.] **A beneficiary's interest in**
7 **a trust that is subject to the trustee's discretion does not constitute an**
8 **interest in property or an enforceable right even if the discretion is**
9 **expressed in the form of a standard of distribution or the beneficiary**
10 **is then serving as a trustee or co-trustee. A creditor or other claimant**
11 **may not attach present or future distributions from such an interest or**
12 **right, obtain an order from a court forcing the judicial sale of the**
13 **interest or compelling the trustee to make distributions, or reach the**
14 **interest or right by any other means, even if the trustee has abused the**
15 **trustee's discretion.**

16 2. This section does not limit the right of a beneficiary to maintain a
17 judicial proceeding against a trustee for an abuse of discretion or failure to
18 comply with a standard for distribution.

19 **3. This section applies whether or not an interest is subject to a**
20 **spendthrift provision.**

21 4. For purposes of this section, a beneficiary's interest in a trust
22 is subject to the trustee's discretion if that interest does not constitute
23 a mandatory distribution as defined in subsection 1 of section 456.5-506.

456.5-506. 1. As used in this section, "mandatory distribution"
2 means a distribution of income or principal which the trustee is
3 required to make to a beneficiary under the terms of the trust,
4 including a distribution upon termination of the trust. The term does
5 not include a distribution subject to the exercise of the trustee's
6 discretion even if (1) the discretion is expressed in the form of a
7 standard of distribution, or (2) the terms of the trust authorizing a
8 distribution couple language of discretion with language of direction.

9 2. Whether or not a trust contains a spendthrift provision, a creditor or
10 assignee of a beneficiary may reach a mandatory distribution of income or
11 principal, including a distribution upon termination of the trust, if the trustee
12 has not made the distribution to the beneficiary within a reasonable time after
13 the required distribution date.

456.7-703. 1. Cotrustees shall act by majority decision.

2 2. If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act
3 for the trust.

4 3. A cotrustee must participate in the performance of a trustee's function
5 unless the cotrustee is unavailable to perform the function because of absence,
6 illness, disqualification under other law, or other temporary incapacity or the
7 cotrustee has properly delegated the performance of the function to another
8 trustee.

9 4. If a cotrustee is unavailable to perform duties because of absence,
10 illness, disqualification under other law, or other temporary incapacity, and
11 prompt action is necessary to achieve the purposes of the trust or to avoid injury
12 to the trust property, the remaining cotrustee or a majority of the remaining
13 cotrustees may act for the trust.

14 5. A trustee may [not] delegate to a cotrustee the performance of a
15 function [the settlor reasonably expected the trustees to perform jointly] in
16 accordance with subsection 1 of section 456.8-807. Unless a delegation was
17 irrevocable, a trustee may revoke a delegation previously made.

18 6. Except as otherwise provided in subsection 7 of this section, a trustee
19 who does not join in an action of another trustee is not liable for the action.

20 7. Each trustee shall exercise reasonable care to:

21 (1) prevent a cotrustee from committing a serious breach of trust; and

22 (2) compel a cotrustee to redress a serious breach of trust.

23 8. A dissenting trustee who joins in an action at the direction of the
24 majority of the trustees and who notified any cotrustee of the dissent at or before
25 the time of the action is not liable for the action unless the action is a serious
26 breach of trust.

456.8-813. 1. **(1)** A trustee shall keep the qualified beneficiaries of the
2 trust reasonably informed about the administration of the trust and of the
3 material facts necessary for them to protect their interests. **A trustee shall be**
4 **presumed to have fulfilled this duty if the trustee complies with the**
5 **notice and information requirements prescribed in subsections 2 to 7**
6 **of this section.**

7 **(2)** Unless unreasonable under the circumstances, a trustee shall
8 promptly respond to a beneficiary's request for information related to the
9 administration of the trust.

10 2. A trustee:

11 (1) upon request of a beneficiary, shall promptly furnish to the beneficiary
12 a copy of the trust instrument;

13 (2) within 60 days after accepting a trusteeship, shall notify the qualified
14 beneficiaries of the acceptance and of the trustee's name, address, and telephone
15 number;

16 (3) within sixty days after the date the trustee acquires knowledge of the
17 creation of an irrevocable trust, or the date the trustee acquires knowledge that
18 a formerly revocable trust has become irrevocable, whether by the death of the
19 settlor or otherwise, shall notify the qualified beneficiaries of the trust's
20 existence, of the identity of the settlor or settlors, of the right to request a copy
21 of the trust instrument, and of the right to a trustee's report as provided in
22 subsection 3 of this section; and

23 (4) shall notify the qualified beneficiaries in advance of any change in the
24 method or rate of the trustee's compensation. [Subdivisions (2) and (3) of this
25 subsection do not apply to a trust that became irrevocable before January 1,
26 2005.]

27 3. A trustee shall send to the permissible distributees of trust income or
28 principal, and to other beneficiaries who request it, at least annually and at the
29 termination of the trust, a report of the trust property, liabilities, receipts, and
30 disbursements, including the source and amount of the trustee's compensation,

31 a listing of the trust assets and, if feasible, their respective market values. Upon
32 a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be
33 sent to the qualified beneficiaries by the former trustee. A personal
34 representative, conservator, or guardian may send the qualified beneficiaries a
35 report on behalf of a deceased or incapacitated trustee.

36 4. A beneficiary may waive the right to a trustee's report or other
37 information otherwise required to be furnished under this section. A beneficiary,
38 with respect to future reports and other information, may withdraw a waiver
39 previously given.

40 5. A trustee may charge a reasonable fee to a beneficiary for providing
41 information under this section.

42 6. The request of any beneficiary for information under any provision of
43 this section shall be with respect to a single trust that is sufficiently identified
44 to enable the trustee to locate the records of the trust.

45 7. If the trustee is bound by any confidentiality restrictions with respect
46 to an asset of a trust, any beneficiary who is eligible to receive information
47 pursuant to this section about such asset shall agree to be bound by the
48 confidentiality restrictions that bind the trustee before receiving such information
49 from the trustee.

50 **8. This section does not apply to a trust created under a trust**
51 **instrument that became irrevocable before January 1, 2005, and the law**
52 **in effect prior to January 1, 2005, regarding the subject matter of this**
53 **section shall continue to apply to those trusts.**

456.8-814. 1. Notwithstanding the [breadth of discretion granted to a
2 trustee in the terms of the trust, including the] use of such terms as "absolute,"
3 "sole," or "uncontrolled," **in the exercise of discretion under an**
4 **ascertainable standard**, the trustee shall exercise [a] **such** discretionary
5 power in good faith and in accordance with the terms and purposes of the trust
6 and the interests of the beneficiaries.

7 2. Subject to subsection 4 of this section, and unless the terms of the trust
8 expressly indicate that a rule in this subsection does not apply:

9 (1) a person other than a settlor who is a beneficiary and trustee of a
10 trust that confers on the trustee a power to make discretionary distributions to
11 or for the trustee's personal benefit may exercise the power only in accordance
12 with an ascertainable standard [relating to the trustee's individual health,
13 education, support, or maintenance within the meaning of Section 2041(b)(1)(A)]

14 or 2514(c)(1) of the Internal Revenue Code];

15 (2) a trustee may not exercise a power to make discretionary distributions
16 to satisfy a legal obligation of support that the trustee personally owes another
17 person; and

18 (3) for purposes of this subsection 2 of this section, the term "trustee"
19 shall include a person who is deemed to have any power of a trustee, whether
20 because such person has the right to remove or replace any trustee, because a
21 reciprocal trust or power doctrine applies, or for any other reason.

22 3. A power whose exercise is limited or prohibited by subsection 2 may be
23 exercised by a majority of the remaining trustees whose exercise of the power is
24 not so limited or prohibited. If the power of all trustees is so limited or
25 prohibited, the court may appoint a special fiduciary with authority to exercise
26 the power.

27 4. Subsection 2 of this section does not apply to:

28 (1) a power held by the settlor's spouse who is the trustee of a trust for
29 which a marital deduction, as defined in Section 2056(b)(5) or 2523(b)(5) of the
30 Internal Revenue Code was previously allowed;

31 (2) any trust during any period that the trust may be revoked or amended
32 by its settlor; or

33 (3) a trust if contributions to the trust qualify for the annual exclusion
34 under Section 2503(c) of the Internal Revenue Code.

456.8-816. Without limiting the authority conferred by section 456.8-815,
2 a trustee may:

3 (1) collect trust property and accept or reject additions to the trust
4 property from a settlor or any other person;

5 (2) acquire or sell property in divided or undivided interests, for cash or
6 on credit, at public or private sale;

7 (3) exchange, partition, or otherwise change the character of trust
8 property;

9 (4) deposit trust money in an account in a financial institution;

10 (5) borrow money, with or without security, and mortgage or pledge trust
11 property for a period within or extending beyond the duration of the trust;

12 (6) with respect to an interest in a proprietorship, partnership, limited
13 liability company, business trust, corporation, or other form of business or
14 enterprise, continue the business or other enterprise and take any action that
15 may be taken by shareholders, members, or property owners, including merging,

16 dissolving, or otherwise changing the form of business organization or
17 contributing additional capital;

18 (7) with respect to stocks or other securities, exercise the rights of an
19 absolute owner, including the right to:

20 (a) vote, or give proxies to vote, with or without power of substitution, or
21 enter into or continue a voting trust agreement;

22 (b) hold a security in the name of a nominee or in other form without
23 disclosure of the trust so that title may pass by delivery;

24 (c) pay calls, assessments, and other sums chargeable or accruing against
25 the securities, and sell or exercise stock subscription or conversion rights; and

26 (d) deposit the securities with a depository or other financial institution;

27 (8) with respect to an interest in real property, construct, or make
28 ordinary or extraordinary repairs to, alterations to, or improvements in, buildings
29 or other structures, demolish improvements, raze existing or erect new party
30 walls or buildings, subdivide or develop land, dedicate land to public use or grant
31 public or private easements, and make or vacate plats and adjust boundaries;

32 (9) enter into a lease for any purpose as lessor or lessee, including a lease
33 or other arrangement for exploration and removal of natural resources, with or
34 without the option to purchase or renew, for a period within or extending beyond
35 the duration of the trust;

36 (10) grant an option involving a sale, lease, or other disposition of trust
37 property or acquire an option for the acquisition of property, including an option
38 exercisable beyond the duration of the trust, and exercise an option so acquired;

39 (11) insure the property of the trust against damage or loss and insure the
40 trustee, the trustee's agents, and beneficiaries against liability arising from the
41 administration of the trust;

42 (12) abandon or decline to administer property of no value or of
43 insufficient value to justify its collection or continued administration;

44 (13) with respect to possible liability for violation of environmental law:

45 (a) inspect or investigate property the trustee holds or has been asked to
46 hold, or property owned or operated by an organization in which the trustee holds
47 or has been asked to hold an interest, for the purpose of determining the
48 application of environmental law with respect to the property;

49 (b) take action to prevent, abate, or otherwise remedy any actual or
50 potential violation of any environmental law affecting property held directly or
51 indirectly by the trustee, whether taken before or after the assertion of a claim

52 or the initiation of governmental enforcement;

53 (c) decline to accept property into trust or disclaim any power with respect
54 to property that is or may be burdened with liability for violation of
55 environmental law;

56 (d) compromise claims against the trust which may be asserted for an
57 alleged violation of environmental law; and

58 (e) pay the expense of any inspection, review, abatement, or remedial
59 action to comply with environmental law;

60 (14) pay or contest any claim, settle a claim by or against the trust, and
61 release, in whole or in part, a claim belonging to the trust;

62 (15) pay taxes, assessments, compensation of the trustee and of employees
63 and agents of the trust, and other expenses incurred in the administration of the
64 trust;

65 (16) exercise elections with respect to federal, state, and local taxes;

66 (17) select a mode of payment under any employee benefit or retirement
67 plan, annuity, or life insurance payable to the trustee, exercise rights thereunder,
68 including exercise of the right to indemnification for expenses and against
69 liabilities, and take appropriate action to collect the proceeds;

70 (18) make loans out of trust property, including loans to a beneficiary on
71 terms and conditions the trustee considers to be fair and reasonable under the
72 circumstances, and the trustee has a lien on future distributions for repayment
73 of those loans;

74 (19) pledge trust property to guarantee or secure loans made by others to
75 a beneficiary;

76 (20) appoint a trustee to act in another jurisdiction with respect to trust
77 property located in the other jurisdiction, confer upon the appointed trustee all
78 of the powers and duties of the appointing trustee, require that the appointed
79 trustee furnish security, and remove any trustee so appointed;

80 (21) pay an amount distributable to a beneficiary who is under a legal
81 disability or who the trustee reasonably believes is incapacitated, by paying it
82 directly to the beneficiary or applying it for the beneficiary's benefit, or by:

83 (a) paying it to the beneficiary's conservator or, if the beneficiary does not
84 have a conservator, the beneficiary's guardian;

85 (b) paying it to the beneficiary's custodian under the Missouri transfers
86 to minors law under sections 404.005 to 404.094, RSMo, or a personal custodian
87 under sections 404.400 to 404.650, RSMo, and, for that purpose, creating a

88 custodianship or custodial trust;

89 (c) if the trustee does not know of a conservator, guardian, custodian, or
90 custodial trustee, paying it to an adult relative or other person having legal or
91 physical care or custody of the beneficiary, to be expended on the beneficiary's
92 behalf; or

93 (d) managing it as a separate fund on the beneficiary's behalf, subject to
94 the beneficiary's continuing right to withdraw the distribution;

95 (22) on distribution of trust property or the division or termination of a
96 trust, make distributions in divided or undivided interests, allocate particular
97 assets in proportionate or disproportionate shares, value the trust property for
98 those purposes, and adjust for resulting differences in valuation;

99 (23) resolve a dispute concerning the interpretation of the trust or its
100 administration by mediation, arbitration, or other procedure for alternative
101 dispute resolution;

102 (24) prosecute or defend an action, claim, or judicial proceeding in any
103 jurisdiction to protect trust property and the trustee in the performance of the
104 trustee's duties;

105 (25) **engage and compensate attorneys, accountants, investment**
106 **advisors, or other agents, and delegate to them trustee's duties and**
107 **functions in accordance with the provisions of section 456.8-807;**

108 (26) sign and deliver contracts and other instruments that are useful to
109 achieve or facilitate the exercise of the trustee's powers[.];

110 [(26)] (27) on termination of the trust, exercise the powers appropriate
111 to wind up the administration of the trust and distribute the trust property to the
112 persons entitled to it; and

113 [(27)] (28) to invest and reinvest trust assets in accordance with sections
114 469.900 to 469.913, RSMo; including investing and reinvesting in securities or
115 obligations of any state or its political subdivisions, including securities or
116 obligations that are underwritten by the trustee or an affiliate of the trustee or
117 a syndicate in which the trustee or an affiliate of the trustee is a member which
118 meet the standards established by the division of finance pursuant to subsection
119 5 of section 362.550, RSMo.

469.600. The doctrine of worthier title and the rule in Bingham's
2 **case are abolished as a rule of law and as a rule of**
3 **construction. Language in a governing instrument describing the**
4 **beneficiaries of a disposition as the transferor's "heirs", "heirs at law",**

5 "next of kin", "distributees", "relatives", or "family", or language of
6 similar import does not create or presumptively create a reversionary
7 interest in the transferor.

473.333. If it appears that there is a surplus of money in the hands of the
2 personal representative that will not shortly be required for the expenses of
3 administration, or payment of claims, taxes or other required disbursements, the
4 personal representative shall make such investment of the money on or after
5 August 28, 1998, in accordance with the provisions of the Missouri prudent
6 investor act, sections [456.900 to 456.913] **469.900 to 469.913**, RSMo. The
7 personal representative may also, without an order of court, invest in (1) direct
8 obligations of, or obligations unconditionally guaranteed as to principal and
9 interest, by the United States, or (2) accounts of savings and loan associations to
10 the extent the accounts are insured by the Federal Savings and Loan Insurance
11 Corporation, without inquiry as to whether the investment is reasonable and
12 prudent. An order of court authorizing investments pursuant to this section does
13 not relieve a personal representative or his sureties of responsibility and liability
14 if the investment made is not in fact in accordance with the Missouri prudent
15 investor act, sections [456.900 to 456.913] **469.900 to 469.913**, RSMo.

473.787. 1. While letters testamentary or of administration authorizing
2 independent administration of the estate are in force, the personal representative
3 therein named is an independent personal representative and his administration
4 of the estate is an independent administration, and all actions taken on or after
5 August 28, 1996, shall be in accordance with the provisions of the Missouri
6 prudent investor act, sections [456.900 to 456.913] **469.900 to 469.913**, RSMo.

2. An independent personal representative shall proceed expeditiously
8 with the settlement and distribution of the estate in accordance with the
9 applicable provisions of this chapter and, except as otherwise specified by the
10 provisions of sections 473.780 to 473.843, shall do so without adjudication, order,
11 or direction of the court, but he may invoke the jurisdiction of the court, in
12 proceedings authorized by this code, to resolve questions concerning the estate or
13 its administration or distribution.

3. Unless he is a member in good standing of the Missouri bar, an
15 independent personal representative, because he owes a fiduciary duty to the
16 persons interested in the estate, shall secure the advice and services of an
17 attorney, who is not a salaried employee of the personal representative, on legal
18 questions arising in connection with:

- 19 (1) The application for and issuance of letters testamentary or of
20 administration;
- 21 (2) The collection, investment and preservation of assets;
- 22 (3) The inventory;
- 23 (4) The allowance, disallowance, compromise and payment of claims;
- 24 (5) The making of tax returns;
- 25 (6) The transfer and encumbrance of property of the estate;
- 26 (7) The interpretation of the will and of the intestacy laws;
- 27 (8) The scheme and making of distribution; and
- 28 (9) The closing of the estate.

475.092. 1. If it is established in a proceeding conducted in [the] a
2 manner [prescribed for] **similar to a proceeding for the** appointment of a
3 conservator of the estate that a person is a minor or disabled, **or is blind or has**
4 **a physical or mental disability as defined under state or federal law**, the
5 court, without appointing a conservator, may authorize, direct or ratify any
6 transaction necessary or desirable to achieve any security, service, or care
7 arrangement meeting the foreseeable needs of the [minor or disabled] person.

8 2. When it has been established in such a proceeding that the person is
9 a minor or disabled, **or is blind or has a physical or mental disability as**
10 **defined under state or federal law**, the court, without appointing a
11 conservator, may authorize, direct or ratify any contract or other transaction
12 relating to the [minor or disabled] person's financial affairs or involving such
13 person's estate if the court determines that the transaction is in the best interests
14 of the [minor or disabled] person and if such action would otherwise be within the
15 power of the court [pursuant to this chapter]. A transaction pursuant to this
16 section may include the establishment by the court or other grantor of an inter
17 vivos trust, **including a trust that complies with the provisions of 42**
18 **U.S.C. Section 1396p(d)(4)**, on behalf of the [minor or disabled] person
19 provided that upon such person's death, after the payment of trustees' fees, [the
20 state of Missouri shall first receive all amounts remaining in the trust up to an
21 amount equal to the total medical assistance paid on such person's behalf
22 pursuant to a state plan as provided in Title 42 of the United States Code] **any**
23 **payments to the state Medicaid agency that are required by the**
24 **provisions of 42 U.S.C. Section 1396p(d)(4) are made** and, provided further,
25 that any creditor of the [minor or disabled] person other than the state of
26 Missouri shall also be paid all sums due for such person's care, maintenance and

27 support, to the extent trust property is sufficient therefor, and, provided, such
28 trust shall terminate upon such person's death and any amounts remaining in the
29 trust after the foregoing payments shall be distributed to [such decedent's estate]
30 **the remainder beneficiaries designated in the trust or as designated**
31 **pursuant to the exercise of a power of appointment set forth in the**
32 **trust. This section shall not be interpreted to require all such trusts to**
33 **be established by a court proceeding.**

34 3. Before approving a protective arrangement or other transaction
35 pursuant to this section, the court shall consider the interests of creditors and
36 dependents of the [minor or disabled] person and, in view of such person's
37 disability, whether such person needs the continuing protection of a
38 conservator. The court may appoint a special conservator to assist in the
39 accomplishment of any protective arrangement or other transaction authorized
40 pursuant to this section who shall have the authority conferred by the order and
41 serve until discharged by order after report to the court of all matters done
42 pursuant to the order of appointment.

43 4. Notwithstanding any other law to the contrary, the trustee of any trust
44 created or approved by a Missouri court [for a minor or disabled person] prior to
45 August 28, 1999, **for the benefit of a person who is a minor or disabled,**
46 **or is blind or has a physical or mental disability as defined under state**
47 **or federal law** shall not be liable to the state of Missouri or to any creditor of
48 such person if, on August 28, 1999, the trust does not have sufficient assets to
49 reimburse the state of Missouri for medical assistance paid on such person's
50 behalf pursuant to a state plan as provided in Title 42 of the United States Code
51 or to reimburse a creditor for sums due for such person's care, maintenance and
52 support. Any such trust which is in existence as of August 28, 1999, shall be
53 subject to subsection 2 of this section, as amended, notwithstanding any
54 provisions of such trust to the contrary. The trustee shall not be liable for any
55 distributions or payments made prior to August 28, 1999, pursuant to the terms
56 of such trust.

475.130. 1. Conservator of the estate of a minor or disabled person shall,
2 under supervision of the court, protect, preserve and manage the estate, invest
3 it, on or after August 28, 1998, in accordance with the provisions of the Missouri
4 prudent investor act, sections [456.900 to 456.913] **469.900 to 469.913**, RSMo,
5 apply it as provided in this code, account for it faithfully, perform all other duties
6 required of him by law, and at the termination of the conservatorship deliver the

7 assets of the protectee to the persons entitled thereto. In protecting, preserving
8 and managing the estate, the conservator of the estate is under a duty to use the
9 degree of care, skill and prudence which an ordinarily prudent man uses in
10 managing the property of, and conducting transactions on behalf of, others. If a
11 conservator of the estate has special skills or is appointed on the basis of
12 representations of special skills or expertise, he is under a duty to use those skills
13 in the conduct of the protectee's affairs. A conservator of the estate is under a
14 duty to act in the interest of the protectee and to avoid conflicts of interest which
15 impair his ability so to act.

16 2. The conservator of the estate shall take possession of all of the
17 protectee's real and personal property, and of rents, income, issue and profits
18 therefrom, whether accruing before or after his appointment, and of the proceeds
19 arising from the sale, mortgage, lease or exchange thereof. Subject to such
20 possession, the title to all such estate, and to the increment and proceeds thereof,
21 is in the protectee and not in the conservator. Upon a showing that funds
22 available or payable for the benefit of the protectee by any federal agency are
23 being applied for the benefit of the protectee, or that such federal agency has
24 refused to recognize the authority of the conservator to administer such funds,
25 the court may waive, by order, the duty of the conservator to account therefor.

26 3. The court has full authority under the rules of civil procedure to enjoin
27 any person from interfering with the right of the conservator to possession of the
28 assets of the protectee, including benefits payable from any source.

29 4. The conservator of the estate shall prosecute and defend all actions
30 instituted in behalf of or against the protectee; collect all debts due or becoming
31 due to the protectee, and give acquittances and discharges therefor, and adjust,
32 settle and pay all claims due or becoming due from the protectee so far as his
33 estate and effects will extend, except as provided in sections 507.150 and 507.188,
34 RSMo.

35 5. A conservator of the estate has power, without authorization or
36 approval of the court, to:

37 (1) Settle or compromise a claim against the protectee or the estate
38 agreeing to pay or paying not more than one thousand dollars;

39 (2) Settle, abandon or compromise a claim in favor of the estate which
40 does not exceed one thousand dollars;

41 (3) Sell, or agree to sell, chattels, choses in action and investment
42 securities reasonably worth not more than one thousand dollars for cash or upon

43 terms involving a reasonable extension of credit;

44 (4) Exchange, or agree to exchange, chattels, choses in action and
45 investment securities for other such property of equivalent value, not in excess
46 of one thousand dollars;

47 (5) Insure or contract for insurance of property of the estate against fire,
48 theft and other hazards;

49 (6) Insure or contract for insurance protecting the protectee against any
50 liability likely to be incurred, including medical and hospital expenses, and
51 protecting the conservator against liability to third parties arising from acts or
52 omissions connected with possession or management of the estate;

53 (7) Contract for needed repairs and maintenance of property of the estate;

54 (8) Lease land and buildings for terms not exceeding one year, reserving
55 reasonable rent, and renew any such lease for a like term;

56 (9) Vote corporate stock in person or by general or limited proxy;

57 (10) Contract for the provision of board, lodging, education, medical care,
58 or necessities of the protectee for periods not exceeding one year, and renew any
59 such contract for a like period.

60 6. If, in exercising any power conferred by subsection 5, of this section, a
61 conservator breaches any of the duties enumerated in subsection 1, he may be
62 surcharged for losses to the estate caused by the breach but persons who dealt
63 with the conservator in good faith, without knowledge of or reason to suspect the
64 breach of duty, may enforce and retain the benefits of any transaction with the
65 conservator which he has power under subsection 5 of this section to conduct.

475.190. 1. The conservator shall invest the money of the protectee, from
2 whatever source derived, unless it is required for other lawful purposes.

3 2. No investment, other than an investment (a) in the direct obligations
4 of or obligations unconditionally guaranteed as to principal and interest by the
5 United States or (b) in savings accounts and time deposits, including time
6 certificates of deposit, in banking institutions to the extent such accounts or
7 deposits are insured by the Federal Deposit Insurance Corporation or (c) in
8 accounts of savings and loan associations to the extent such accounts are insured
9 by the Federal Savings and Loan Insurance Corporation, shall be made without
10 prior order of the court.

11 3. The conservator may invest in any other property, real or personal,
12 which the court finds is a reasonable and prudent investment in the
13 circumstances. An order of court authorizing investment under this subsection

14 does not relieve a conservator or his sureties of responsibility and liability if the
15 investment made is not in fact in accordance with the Missouri prudent investor
16 act, sections [456.900 to 456.913] **469.900 to 469.913**, RSMo.

17 4. Every conservator shall make a report at every annual settlement of
18 the disposition made by the conservator of the money belonging to the protectee
19 entrusted to him. If it appears that the money is invested in securities, then the
20 conservator shall report a detailed description of the securities and shall describe
21 any real estate security and state where it is situated, and its value, which report
22 shall be filed in the court. The court shall carefully examine into the report as
23 soon as made, and, if in the opinion of the court the security is insufficient, the
24 court shall make such orders as are necessary to protect the interest of the
25 protectee. The conservator and his sureties are liable on their bond for any
26 omission to comply with the orders of the court. If the money has not been
27 invested as authorized by law the conservator shall state that fact and the
28 reasons, and shall state that the conservator has been unable to make an
29 investment after diligent effort to do so.

30 5. If any conservator refuses or neglects to make the report at the time
31 aforesaid, or makes a false report thereof, he and his sureties are liable on their
32 bond for all loss or damage to the protectee occasioned by reason of his neglect
33 or refusal so to report, or by making a false report, and the conservator may, on
34 account thereof, be removed from his trust in the discretion of the court.

✓

Copy